



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 5, 2005

Ms. Patricia E. Carls  
Brown & Carls, L.L.P.  
106 East 6<sup>th</sup> Street, Suite 550  
Austin, Texas 78701

OR2005-00152

Dear Ms. Carls:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 216439.

The City of Georgetown (the "city"), which you represent, received two requests for records pertaining to a specified incident. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.<sup>1</sup>

We first note that the submitted documents include an arrest warrant and a criminal complaint. Article 15.26 of the Code of Criminal Procedure provides:

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<sup>1</sup> We note that telephone numbers and motor vehicle information have been redacted from the first page of the responsive documents you have submitted for review. We emphasize that section 552.301 of the Government Code requires a governmental body to submit responsive information in a manner that permits this office to review the information. *See* Gov't Code § 552.301(e)(1)(D). Because the nature of the information is apparent from the context in this case, the redactions do not prevent our review. We note, however, that submitting redacted documents can be a violation of the procedural requirements of section 552.301, resulting in a determination that the information at issue must be released. *See* Gov't Code §§ 552.006, .301, .302. We accordingly advise that with respect to future requests for an open records decision, the city should submit any responsive documents in non-redacted form. We note that under section 552.3035, the attorney general is prohibited from disclosing any information submitted for review in the open records process in accordance with section 552.301(e)(1)(D).

The arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, is public information, and beginning immediately when the warrant is executed the magistrate's clerk shall make a copy of the warrant and the affidavit available for public inspection in the clerk's office during normal business hours. A person may request the clerk to provide copies of the warrant and affidavit on payment of the cost of providing the copies.

Crim Proc. Code art. 15.26. This provision makes the submitted arrest warrant expressly public. The exceptions found in the Public Information Act do not, as a general rule, apply to information that is made public by other statutes. See Open Records Decision No. 525 (1989) (statutory predecessor). Therefore, the arrest warrant we have marked in the submitted documents must be released.

With respect to the complaint, we note that article 15.04 of the Code of Criminal Procedure provides that "[t]he affidavit made before the magistrate or district or county attorney is called a 'complaint' if it charges the commission of an offense." Case law indicates that a complaint can support the issuance of an arrest warrant. See *Janecka v. State*, 739 S.W.2d 813, 822-23 (Tex. Crim. App. 1987); *Villegas v. State*, 791 S.W.2d 226, 235 (Tex. App.—Corpus Christi 1990, pet. ref'd); *Borsari v. State*, 919 S.W.2d 913, 918 (Tex. App.—Houston [14 Dist.] 1996, pet. ref'd) (discussing well-established principle that complaint in support of arrest warrant need not contain same particularity required of indictment). Thus, if the submitted complaint was presented to the magistrate to support the issuance of the arrest warrant at issue, the complaint is made public by article 15.26 and must be released.

The submitted documents also contain an ST-3 accident report form that appears to have been completed pursuant to chapter 550 of the Transportation Code. See Transp. Code § 550.064 (Texas Peace Officer's Accident Report form). Section 550.065(b) of the Transportation Code states that except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. Transp. Code § 550.065(c)(4). Under this provision, the Department of Public Safety or another governmental body is required to release a copy of an accident report to a person who provides the governmental body with two or more pieces of information specified by the statute. *Id.* In the present request, the requestor has not provided the required information. Thus, the city must withhold release the marked accident report form under section 550.065(c).

With respect to the information you seek to withhold, we address your claim under section 552.101 of the Government Code. Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and

encompasses information made confidential by other statutes. The submitted arrest report contains a fingerprint, disclosure of which is governed by sections 560.001, 560.002, and 560.003 of the Government Code. Sections 560.001, 560.002, and 560.003 provide as follows:

Sec. 560.001. DEFINITIONS. In this chapter:

- (1) "Biometric identifier" means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry[.]

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Sec. 560.002. DISCLOSURE OF BIOMETRIC IDENTIFIER. A governmental body that possesses a biometric identifier of an individual:

- (1) may not sell, lease, or otherwise disclose the biometric identifier to another person unless:

- (A) the individual consents to the disclosure;

- (B) the disclosure is required or permitted by a federal statute or by a state statute other than Chapter 552 [of the Government Code]; or

- (C) the disclosure is made by or to a law enforcement agency for a law enforcement purpose; and

- (2) shall store, transmit, and protect from disclosure the biometric identifier using reasonable care and in a manner that is the same as or more protective than the manner in which the governmental body stores, transmits, and protects its other confidential information.

Sec. 560.003. APPLICATION OF CHAPTER 552. A biometric identifier in the possession of a governmental body is exempt from disclosure under Chapter 552.

Gov't Code §§ 560.001-.003. We find section 560.002 does not permit the disclosure of the submitted fingerprint information in this instance. The city must therefore withhold the fingerprint we have marked in the submitted documents under section 552.101 in conjunction with section 560.003 of the Government Code.

As you acknowledge, section 552.101 also encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly

intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. In addition, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses are protected by common-law privacy. See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, specific illnesses, procedures, and physical disabilities). Upon review, we agree that portions of the information you seek to withhold from the submitted documents are protected by common-law privacy. We therefore determine the city must withhold the information we have marked in the documents pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

The documents also contain the arrested person's social security number. A social security number may be excepted from disclosure in some circumstances under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. See Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained or maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. See *id.* We have no basis for concluding that the social security number at issue is confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the city pursuant to any provision of law enacted on or after October 1, 1990.

Finally, we note that the remaining documents contain motor vehicle information that is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 provides in pertinent part:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130. We have marked Texas motor vehicle driver's license, title, and registration information that the city must withhold pursuant to section 552.130.

In summary, the submitted arrest warrant must be released pursuant to article 15.26 of the Code of Criminal Procedure. Provided it was presented in support of the issuance of the arrest warrant, the submitted criminal complaint must also be released pursuant to article 15.26. The marked ST-3 accident report form must be withheld pursuant to section 550.056 of the Transportation Code. The city must withhold the marked fingerprint pursuant to section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. We have marked information that is protected by common-law privacy and must be withheld under section 552.101. A social security number may be excepted under section 552.101 in conjunction with federal law. We have marked information in the remaining submitted documents that must be withheld under section 552.130 of the Government Code. The remainder of the submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within thirty calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within ten calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within ten calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within ten calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within ten calendar days of the date of this ruling.

Sincerely,

A handwritten signature in dark ink, appearing to read 'DS', followed by a long horizontal flourish.

David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/seg

Ref: ID# 216439

Enc: Submitted documents

c: Mr. Gary Hawthorne  
201 Spanish Oak Drive  
Georgetown, Texas 78628  
(w/o enclosures)